

2182 #5

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Mitchell T. Berg § Attorney docket no: 29820.9
§
Assignee: REBA Technologies, Inc. §
§
Serial No.: 09/873,019 § Group Art Unit: 2182
§
Filed: June 1, 2001 §
§
FOR: METHOD AND SYSTEM FOR § Examiner: Unknown
INITIATING EXECUTION OF §
SOFTWARE IN RESPONSE TO A STATE §
§
§
§
§

RECEIVED
OCT 16 2001
Group 2100

**REVOCATION/NEW POWER OF ATTORNEY BY ASSIGNEE OF ENTIRE INTEREST
INCLUDING
CERTIFICATION FOR TAKING ACTION BY ASSIGNEE UNDER 37 CFR 3.73(b)**

Commissioner For Patents
Washington, D.C. 20231

Dear Sir:

The above-identified assignee hereby revokes all powers of attorney previously given and hereby appoints the following attorneys to prosecute the above-identified application and to transact all business in the United States Patent and Trademark Office in connection therewith:

Michael A. Davis, Jr. (Reg. No. 35,488); Michael J. Balconi-Lamica (Reg. No. 34,291); David L. McCombs (Reg. No. 32,271); Jeffrey M. Becker (Reg. No. 35,442); James R. Bell (Reg. No. 26,528); L. Howard Chen (Reg. No. 46,615); Randall E. Colson (Reg. No. 40,566); Ruben C. DeLeon (Reg. No. 37,812); Brian J. Hubbard (Reg. No. 45,873); Rita M. Irani (Reg. No. 31,028); Warren B. Kice (Reg. No. 22,732); Christopher P. Kosh (Reg. No. 42,760); Todd Mattingly (Reg. No. 40,298); John Montgomery (Reg. No. 31,124); Bill R. Naifeh (Reg. No. 44,962); David M. O'Dell (Reg. No. 42,044); Brandi W. Sarfatis (Reg. No. 37,713); Mark P. Kahler (Reg. No. 29, 178)

Please address all correspondence and telephone calls regarding this application to:

Michael A. Davis, Jr.
Attorney for Applicant
Haynes and Boone, LLP
600 Congress Avenue, Suite 1600
Austin, Texas 78701-3236
(512) 867-8458
(512) 867-8623 – Fax

The undersigned representative of the above-identified assignee certifies that the above-identified assignee is the assignee of the entire right, title and interest in the above-identified patent application by virtue of a chain of title from the inventor of the above-identified patent application to the above-identified assignee as shown below:

Intellectual Property Transfer Agreement (attached hereto)

From: Mitchell T. Berg
To: Berg-Evans, Inc.
508 Newhall Cove
Austin, Texas 78746

Recorded: Submitted to the Assignment Division of the United States Patent and Trademark Office on August 10, 2001.

Certificate of Amendment (attached hereto)

Of: Berg-Evans, Inc., changing its name from "Berg-Evans, Inc." to "REBA Technologies, Inc."

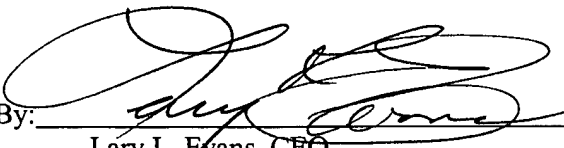
Recorded: April 2, 2001, State of Delaware, Office of the Secretary of State

The undersigned has reviewed all the documents in the chain of title of the above-identified patent application and, to the best of the undersigned's knowledge and belief, title is in the above-identified assignee. The undersigned (whose title is supplied below) is empowered to sign this certificate on behalf of the above-identified assignee.

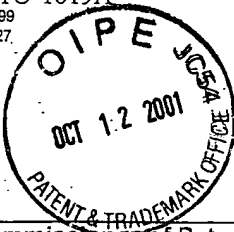
The undersigned hereby declares that all statements made herein of the undersigned's own knowledge are true; and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements, and the like so made, are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Executed the 24 day of Sep, 2001.

REBA Technologies, Inc.

By: 
Lary L. Evans, CEO

FORM PTO-1619A
Expires 06/30/99
OMB 0651-0027



U.S. Department of Commerce
Patent and Trademark Office
PATENT

RECORDATION FORM COVER SHEET PATENTS ONLY

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TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) of copy(ies)

Submission Type

- ☒ New
- ☐ Resubmission (Non-Recordation)
Document ID#
- ☐ Correction of PTO Error
Reel # Frame #
- ☐ Corrective Document
Reel # Frame #

Conveyance Type

- ☒ Assignment ☐ Security Agreement
- ☐ License ☐ Change of Name
- ☐ Merger ☐ Other
- U.S. Government**
(For Use ONLY by U.S. Government Agencies)
- ☐ Departmental File ☐ Secret File

Conveying Party(ies)

- ☐ Mark if additional names of conveying parties attached
- Name (line 1) Execution Date
Month Day Year
- Name (line 2)

Second Party

- Name (line 1)
- Name (line 2)
- Execution Date
Month Day Year

Receiving Party

- ☐ Mark if additional names of receiving parties attached
- Name (line 1) ☐ If document to be recorded
is an assignment and the
receiving party is not
domiciled in the United
States, an appointment
of a domestic
representative is attached.
(Designation must be a
separate document from
Assignment.)
- Name (line 2)
- Address (line 1)
- Address (line 2)
- Address (line 3)
City State/Country Zip Code

Domestic Representative Name and Address

Enter for the first Receiving Party only.

- Name
- Address (line 1)
- Address (line 2)
- Address (line 3)
- Address (line 4)

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Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

Correspondent Name and Address

Area Code and Telephone Number **512/867-8458**

Name **Michael A. Davis, Jr.**

Address (line 1) **Haynes and Boone, LLP**

Address (line 2) **600 Congress Avenue, Suite 1600**

Address (line 3) **Austin, Texas 78701-3236**

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

5

Application Number(s) or Patent Number(s)

☐ Mark if additional numbers attached

Enter either the Patent Application Number or the Patent Number (DO NOT ENTER BOTH numbers for the same property).

Patent Application Number(s)

Patent Number(s)

09/873018

09/872329

09/872539

09/873019

09/872332

09/872081

09/872376

09/872372

60/257,456

If this document is being filed together with a new Patent Application, enter the date the patent application was signed by the first named executing inventor.

Month Day Year

Patent Cooperation Treaty (PCT)

Enter PCT application number
only if a U.S. Application Number
has not been assigned.

PCT

PCT

PCT

PCT

PCT

PCT

Number of Properties

Enter the total number of properties involved.

9

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41): \$ **360.00**

Method of Payment:
Deposit Account

Enclosed ☒

Deposit Account ☐

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

08-1394

Authorization to charge additional fees:

Yes

☒

No

☐

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Michael A. Davis, Jr.

Name of Person Signing

Signature

Date

8-10-2001



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INTELLECTUAL PROPERTY TRANSFER AGREEMENT

THIS INTELLECTUAL PROPERTY TRANSFER AGREEMENT ("Agreement") is entered into as of January 12, 2001 ("Effective Date"), by and between Mitchell T. Berg ("Founder") and Berg-Evans, Inc., a Delaware corporation ("Company").

RECITALS

WHEREAS, Founder has performed certain activities to form Company;

WHEREAS, Founder has certain Intellectual Property Rights and Material, as defined below;

WHEREAS, Founder and others have formed and jointly own Company, which is to own the Intellectual Property Rights and Material defined below and is to conduct the Business defined below based upon such Intellectual Property Rights and Material;

WHEREAS, Founder wishes to assign (to Company) Founder's entire right, title and interest in and to certain Intellectual Property Rights and Material; and

NOW, THEREFORE, for good and valuable consideration, including the foregoing premises, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows.

ARTICLE I

Transfer

1.1 **Assignment.** Founder does hereby, without reservation, irrevocably:

(a) sell, assign, grant, transfer and convey to Company (and its successors and assigns) Founder's entire right, title and interest (past, present, future, and throughout the world) in and to (i) the Business IP and (ii) any and all claims, of any nature whatsoever, for past, present or future infringement or violation of the Business IP; provided however that, to the extent permitted by applicable law, if all or any portion of the Business IP includes a work of authorship created by Founder during Founder's employment or engagement by Company, either solely or jointly with another, such work of authorship shall automatically be deemed to be created as a "work made for hire" (as defined in the United States Copyright Act (17 U.S.C. et seq.)) that is owned solely by Company;

(b) represent, warrant and covenant that Founder forever waives all Moral Rights in the Business IP and shall never assert any Moral Right in the Business IP; and

(c) acknowledge and agree that Founder shall have no license, sublicense, right or immunity, either directly, indirectly, or by implication, estoppel or otherwise, under all or any part of the Business IP.

"Business" shall mean the Company's business as presently conducted or as contemplated to be conducted by the Company (e.g. including but not limited to the design, development, manufacturing, use, marketing, distribution, licensing or sale of the products and technology and services, irrespective of whether current or under development, as described in the Patent Application).

"Business IP" shall mean Intellectual Property Rights and Material that are used or contemplated to be used in or by, or necessary to the operation or conduct of, the Business.

"Intellectual Property Rights" shall mean any patent, trade secret, confidential Material, know-how, show-how, maskwork right, copyright (e.g. including but not limited to any Moral Right), trademark, service mark, domain name, and any other intellectual property protection and intangible legal rights and interests, of any one or more countries, including for example but not limited to (a) any publicity or privacy right, (b) any utility model or application therefor, (c) any industrial model or application therefor, (d) any certificate of invention or application therefor, (e) any application for patent, including for example but not limited to any provisional, divisional, reissue, reexamination or continuation application, (f) any substitute, renewal or extension of any such application, and (g) any right of priority resulting from the filing of any such application.

"Material" shall mean: (a) any work of authorship, idea, procedure, process, system, method, concept, principle, discovery, invention, art, machine, manufacture, composition of matter, material, improvement, formula, pattern, device, compilation, information, list, article, code, matter, program, technique, apparatus, algorithm, design, circuitry, hardware, firmware, software and data, irrespective of whether patentable or copyrighted or neither, and (b) any portion, copy and extract of such Material, irrespective of whether in tangible or intangible form, and irrespective of media.

"Moral Rights" shall mean (a) any right of paternity or integrity, (b) any right to claim authorship or require authorship identification, (c) any right to object to distortion, mutilation or other modification of, or other derogatory action in relation to, a work of authorship, and (d) any similar right existing under judicial or statutory law of any country or under any treaty, irrespective of whether such right is generally referred to as a "moral right".

"Patent Application" shall mean the patent application (attached hereto) that was filed on December 21, 2000 with Mitchell T. Berg as inventor, which is hereby incorporated by reference into this Agreement.

1.2 Authorization. Founder does hereby, without reservation, irrevocably authorize Company and its successors, assigns, nominees, representatives and designees to apply, in Company's own name, for any and all Intellectual Property Rights that may cover (or be available in, or result from, or be granted pursuant to) the Business IP, and to claim any and all rights of priority without further authorization from Founder so that such Intellectual Property Rights issue in the name of Company or its successors or assigns.

1.3 Cooperation. Founder represents, warrants and covenants that Founder shall (at Company's sole expense for Founder's reasonable actual fees and expenses), during and after the term of this Agreement, in every way cooperate and do everything that Company or any one or more of its successors, assigns, nominees, representatives and designees may reasonably consider necessary or appropriate to assist Company and its successors, assigns, nominees, representatives and designees to prepare and make filings in any and all countries to apply for, prosecute, register, evidence, defend, obtain, hold, secure, vest title to, protect, perfect, maintain, uphold and enforce any and all Intellectual Property Rights that may cover (or be available in, or result from, or be granted pursuant to) the Business IP.

Such cooperation includes for example but is not limited to: (a) promptly communicating to Company and its successors, assigns, nominees, representatives and designees any Material relating to creation, preparation, conception, reduction to practice, invention or discovery of any one or more of the Business IP; (b) testifying and rendering prompt assistance and cooperation in any and all legal proceedings (e.g. including but not limited to any opposition, cancellation proceeding, interference proceeding, priority contest, public use proceeding, reexamination proceeding, and court proceeding) involving any one or more of the Business IP; and (c) executing, verifying and delivering any and all assignments, oaths, declarations, powers of attorney, and other instruments and documents.

1.4 Power of Attorney. If Founder fails or refuses to execute any such assignment, oath, declaration, power of attorney, instrument or document, Founder hereby designates and appoints Company (and its successors and assigns) as Founder's true and lawful agent and attorney-in-fact (such agency and power of attorney being irrevocable by Founder and coupled with an interest in favor of Company and its successors and assigns), with full power of substitution, to act for Founder and in Founder's behalf to do any lawfully permitted act in furtherance of the purposes of Sections 1.1(a), 1.2 and 1.3 (e.g. including but not limited to executing, verifying and filing such assignments, oaths, declarations, powers of attorney, and other instruments and documents) in Founder's name and stead but on behalf of and for the benefit of Company and its successors and assigns, with the same legal force and effect as if Founder performed such act, irrespective of whether in Founder's name or Company's name or otherwise.

ARTICLE II

Warranties

2.1 Founder's Representation and Warranty. Founder represents, warrants and covenants to Company that, to Founder's knowledge:

(a) each and every portion of the Business IP (except to the extent incorporating Material originating from Company) shall neither infringe nor violate any one or more Intellectual Property Rights of Founder or any one or more non-parties; and

(b) in the performance of activities under this Agreement, all Material (except to the extent originating from Company) used by Founder, or disclosed by Founder to Company, or brought by Founder onto Company's premises shall neither infringe nor violate any one or more Intellectual Property Rights of Founder or any one or more non-parties.

2.2 Founder's Obligations. Founder represents, warrants and covenants that:

(a) Company neither does nor will owe any fee, payment, royalty or commission to any non-party as a result of Founder's execution, delivery and performance of this Agreement;

(b) Founder has full power and authority to enter into this Agreement, to satisfy all of Founder's obligations, representations, warranties and covenants under this Agreement, and to assign and grant all rights assigned or granted to Company under this Agreement;

(c) Founder's execution, delivery and performance of this Agreement does not and shall not conflict with Founder's past, present and future agreements (and obligations, representations, warranties and covenants), oral or written, with any non-party; and

(d) Founder shall not at any time do or cause to be done any act or thing which may materially adversely affect any right of Company in and to the Business IP.

ARTICLE III

Miscellaneous

3.1 Governing Law. Notwithstanding anything to the contrary in this Agreement, this Agreement shall be deemed entered into in Texas and shall be governed by and construed and interpreted in accordance with the laws of the State of Texas that apply to contracts executed in and performed entirely within the State of Texas, without reference to any rules of conflict of laws.

3.2 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of any party; provided however that Founder shall not, without the prior written consent of Company, assign or transfer this Agreement or any obligation incurred under this Agreement. Any attempt by Founder to assign or transfer this Agreement or any obligation incurred under this Agreement, in contravention of this paragraph, shall be void and of no force and effect. Notwithstanding anything to the contrary in this Agreement, Company may assign this Agreement, without Founder's consent, to any non-party.

3.3 Notices. All notices by a party under this Agreement shall be (a) in writing, (b) addressed to the other party at the address set forth below (or as expressly designated by such other party in a subsequent effective written notice referring specifically to this Agreement), (c) sent in a manner requiring a signed receipt, such as courier delivery, Federal Express delivery, or registered (or certified) mail, return receipt requested, and (d) deemed effective upon receipt.

If to Founder:

Mitchell T. Berg
435 10th avenue
Kirkland, Washington 98033

If to Company:

Berg-Evans, Inc.
508 Newhall Cove
Austin, Texas 78746

3.4 Counterparts. This Agreement may be signed in multiple counterparts, and each such duly signed counterpart shall be deemed to be an original copy of this Agreement, provided however that each party shall receive a counterpart fully signed by the other party.

3.5 Headings. Titles and headings of paragraphs and sections within this Agreement are provided merely for convenience and shall not be used or relied upon in construing this Agreement or the parties' intentions with respect thereto.

3.6 **Waivers.** Company shall not be required to give notice to enforce strict adherence to all provisions of this Agreement. No breach or provision of this Agreement shall be deemed waived, modified or excused by Company, unless such waiver, modification or excuse is in writing and signed by an authorized officer of Company. The failure by or delay of Company in enforcing or exercising any of its rights under this Agreement shall (a) not be deemed a waiver, modification or excuse of such right or of any breach of the same or different provision of this Agreement, and (b) not prevent a subsequent enforcement or exercise of such right. Company shall be entitled to fully enforce Founder's covenants and promises contained herein, notwithstanding the existence of any claim or cause of action by Founder against Company under this Agreement or otherwise.

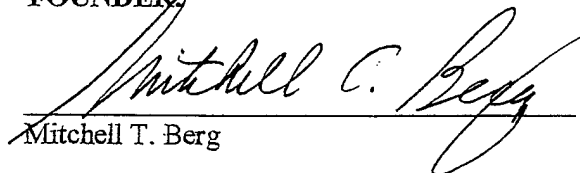
3.7 **Severability.** The parties intend all provisions of this Agreement to be enforced to the fullest extent permitted by law. Founder acknowledges and agrees that each covenant and promise contained herein is a separate obligation independently supported by good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged. Accordingly, if a court of competent jurisdiction determines that the scope and/or operation of any provision of this Agreement is unenforceable as written, then Company and Founder intend that the court should reform such provision (e.g. to a narrower scope and/or operation) as it determines to be enforceable. If, however, any provision of this Agreement is held to be unenforceable under present or future law, and not subject to reformation, then (a) such provision shall be fully severable, (b) this Agreement shall be construed and enforced as if such provision was never a part of this Agreement, and (c) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by unenforceable provisions or by their severance.

3.8 **Cumulative Rights.** All rights and remedies specified herein are cumulative and are in addition to, not in limitation of, any rights or remedies the parties may have at law or in equity, and all such rights and remedies may be exercised singularly or concurrently.

3.9 **Liabilities.** Under this Agreement, Founder shall not transfer, and Company shall not assume, any liabilities whatsoever.

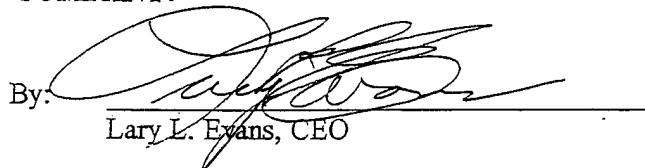
IN WITNESS WHEREOF, the parties have executed this Agreement and caused the same to be duly delivered on their behalf as of the Effective Date, notwithstanding any later date set forth below.

FOUNDER:



Mitchell T. Berg

COMPANY:

By: 

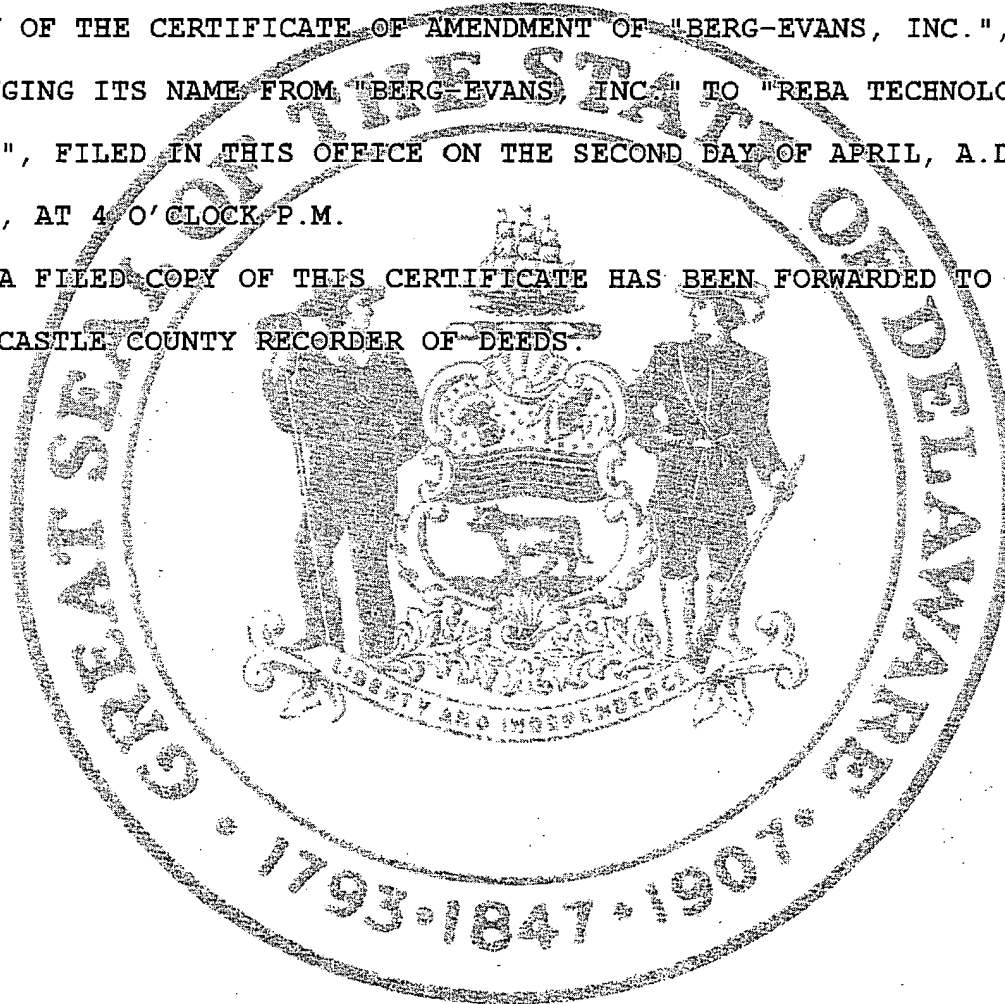
Lary L. Evans, CEO

State of Delaware
Office of the Secretary of State

PAGE 1

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "BERG-EVANS, INC.", CHANGING ITS NAME FROM "BERG-EVANS, INC." TO "REBA TECHNOLOGIES, INC.", FILED IN THIS OFFICE ON THE SECOND DAY OF APRIL, A.D. 2001, AT 4 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

3342325 8100

AUTHENTICATION: 1061062

010161121

DATE: 04-03-01



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Group 2100

**CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION**

Berg-Evans, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"),

DOES HEREBY CERTIFY:

FIRST: That this corporation was originally incorporated on January 10, 2001, pursuant to the General Corporation Law of the State of Delaware (the "General Corporation Law").

SECOND: That the Company's Certificate of Incorporation is amended by deleting in its entirety existing ARTICLE I and inserting in lieu thereof a new ARTICLE I, reading as follows:

"ARTICLE I

The name of the corporation is REBA Technologies, Inc."

THIRD: The foregoing amendment was approved by the holders of all shares of the Corporation in accordance with Section 228 of the General Corporation Law.

* * * * *

a-111326.1

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 04:00 PM 04/02/2001
010161121 - 3342325

IN WITNESS WHEREOF, this Certificate of Amendment of Certificate of Incorporation
has been signed by the President of the Corporation this 3/5 day of March, 2001.

BERG-EVANS, INC.
(to be renamed hereby
REBA TECHNOLOGIES, INC.)

By: 

Larry L. Evans
President and Treasurer